

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

PATRICIA FRYE,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No. ED CV 15-01991 AFM

**MEMORANDUM OPINION AND
ORDER REVERSING DECISION
OF THE COMMISSIONER AND
REMANDING FOR FURTHER
ADMINISTRATIVE PROCEEDINGS**

FACTUAL BACKGROUND

On June 29, 2012, Plaintiff Patricia Frye filed applications for Supplemental Security Income (SSI) and Disability Insurance Benefits (DIB), alleging that she was disabled beginning on June 15, 2009. After her application was denied initially and upon reconsideration, Plaintiff requested a hearing before an ALJ, and a hearing was held on February 12, 2014, at which Plaintiff testified on her own behalf. (AR 31-62.) The ALJ summarized Plaintiff's hearing testimony as follows:

"The claimant testified at the hearing, she is unable to work because of her heart problems, breathing problems and recently developed swelling in both feet. She explained she experiences breathing difficulties, shortness of breath, and constant pain which varies in

1 intensity. She estimated she would stand up for up to twenty minutes
2 at one time, walk down her driveway, and perform household chores at
3 a slower pace. She explained that she has ‘good’ days and ‘bad’ days.
4 She estimated having about one to two good days a week. On these
5 days, she is able to perform household chores around her house.
6 However she has to lie down on and off throughout the day, and naps
7 four to five hours during the day. She is able to use a computer and
8 the internet on her cell phone. She can shop (sometimes with
9 assistance) and maintain her household. She drives about once a week
10 to shop and for appointments. . . .” (AR 19.)

11 On April 11, 2014, the ALJ issued a decision applying the multi-step
12 sequential analysis and concluding that Plaintiff was not disabled. (AR 15-24.)
13 The ALJ found that Plaintiff had severe impairments consisting of tachycardia,
14 asthma, chronic obstructive pulmonary disease (COPD), hypertension, obstructive
15 sleep apnea, dyslipidemia, degenerative changes in her lumbar spine, and obesity,
16 but that none of these impairments met or equaled a listed impairment. (AR 17-18.)
17 The ALJ further found that “[Plaintiff’s] allegations as to the intensity, duration and
18 functionally limiting effects of her impairments are not fully credible” (AR
19 20.) The ALJ concluded that Plaintiff was capable of performing a narrowed range
20 of light work activity and that she could return to her past work as a sales person
21 and sales manager, as well as alternative occupations. (AR 22-24.) The Appeals
22 Council denied Plaintiff’s request for review of the ALJ’s decision.

23 On September 26, 2015, Plaintiff filed a complaint seeking review of the
24 Commissioner’s denial of her applications for DIB and SSI payments. In
25 accordance with the Court’s case management order, Plaintiff filed a memorandum
26 in support of plaintiff’s complaint (ECF No. 18), and the Commissioner filed a
27 memorandum in support of defendant’s answer. (ECF No. 27.) Plaintiff also filed
28

1 a notice that she was not submitting a reply. (ECF No. 28.) This matter now is
2 ready for decision.

3 **DISPUTED ISSUE**

4 Plaintiff has raised a single issue in challenging the ALJ's decision denying
5 benefits: Whether the ALJ failed to properly consider Plaintiff's subjective
6 complaints and failed to properly assess Plaintiff's credibility.

7 **DISCUSSION**

8 The ALJ's adverse credibility finding was based on a number of grounds:
9 First, the ALJ stated that Plaintiff "has the ability to perform household chores,
10 shop, prepare meals, drive, manage her finances, maintain a residence, care
11 appropriately for her grooming and hygiene, use telephones and computers, manage
12 her medical treatment and appointment, care for her dogs, and perform yard work."
13 (AR 19, *citing* AR 208, 211 and Plaintiff's hearing testimony.) Second, according
14 to the ALJ, Plaintiff's "treatment has overall consisted of routine follow up and
15 medication management treatment" (AR 19), and "her symptoms are effectively
16 managed with medications, diet changes, exercise and limiting her exposure to
17 environment irritants." (AR 20.) Third, the ALJ pointed to an interview that
18 Plaintiff had with a field office representative and stated that Plaintiff had no
19 difficulty during the interview. (AR 19.) Fourth, the ALJ noted "significant
20 inconsistencies between [Plaintiff's] alleged severity of her symptoms and
21 limitations and the evidence." (AR 19.) As discussed below, the Court finds that
22 these reasons are not legally sufficient to support the ALJ's adverse credibility
23 determination.

24 An ALJ's assessment of pain severity and claimant credibility is entitled to
25 "great weight." *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989). Where the
26 claimant has produced objective medical evidence of an impairment which could
27 reasonably be expected to produce some degree of pain and/or other symptoms, and
28 the record is devoid of any affirmative evidence of malingering, the ALJ may reject

1 the claimant's testimony regarding the severity of the claimant's pain and/or other
2 symptoms only if the ALJ makes specific findings stating clear and convincing
3 reasons for doing so. *See Cotton v. Bowen*, 799 F.2d 1403, 1407 (9th Cir. 1986);
4 *see also Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996). Here, since the
5 Commissioner has not argued that there was evidence of malingering and that a
6 lesser standard consequently should apply, the Court will apply the "clear and
7 convincing" standard to the ALJ's adverse credibility determination. *See Burrell v.*
8 *Colvin*, 775 F.3d 1133, 1136 (9th Cir. 2014) (applying "clear and convincing"
9 standard where the government did not argue that a lesser standard should apply
10 based on evidence of malingering). "The clear and convincing standard is the most
11 demanding required in Social Security cases." *Garrison v. Colvin*, 759 F. 3d 995,
12 1015 (9th Cir. 2014).

13 • **Daily activities**

14 The Ninth Circuit has "repeatedly warned that ALJs must be especially
15 cautious in concluding that daily activities are inconsistent with testimony about
16 pain, because impairments that would unquestionably preclude work and all the
17 pressures of a workplace environment will often be consistent with doing more than
18 merely resting in bed all day." *Id.* at 1016. "[T]he mere fact that a plaintiff has
19 carried on certain daily activities, such as grocery shopping, driving a car, or
20 limited walking exercise, does not in any way detract from her credibility as to her
21 overall disability." *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001).

22 Here, the ALJ's decision summarized Plaintiff's daily activities based on an
23 exertion questionnaire and Plaintiff's hearing testimony. (AR 19.) Yet he failed to
24 identify how this evidence of Plaintiff's daily activities contradicts specific aspects
25 of her testimony or claims; instead, the ALJ provided only the general statement
26 that the activities are inconsistent with the severity of Plaintiff's claimed symptoms
27 and "indicate she is not as restricted in her activities as alleged." (*Id.*) That is not
28 sufficient. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 493 (9th Cir. 2015) (ALJ

1 must identify specifically what testimony is not credible). Certainly, nothing in the
2 questionnaire or hearing testimony suggests vigorous daily activities by Plaintiff.
3 The answers in the questionnaire state that Plaintiff can do yard work only “in very
4 short intervals” (AR 208); that she does “not walk much” and “I have to stop and sit
5 often” (*Id.*); that she can carry light (but not heavy) groceries into the house from
6 her car (AR 209); that some days she must skip doing all of her daily chores (*Id.*);
7 that she cannot do yard work for more than 15 minutes at a time (*Id.*); and that
8 simple chores take her a very long time because she can only do her chores for
9 about 10 minutes at a time (AR 210). Plaintiff’s hearing testimony similarly
10 reflects that it takes her a long time to accomplish simple chores because she needs
11 to stop and sit for 15 to 20 minutes frequently (AR 44), and that she has to sit down
12 when shopping because she gets tired (AR 43). Considered in its entirety, this
13 evidence does not present a clear and convincing reason for discounting Plaintiff’s
14 credibility concerning the severity of her symptoms. See *Vertigan, supra*, 260 F.3d
15 at 1050; *Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001) (finding error
16 where ALJ’s credibility discussion selectively quoted information from the record).
17 In sum, the ALJ’s discussion of Plaintiff’s daily activities does not constitute a
18 valid reason to discredit Plaintiff’s testimony.

19 • **Conservative medical treatment and effective symptom management**

20 The record shows that Plaintiff takes medications to control her heart rate,
21 has a CPAP machine for sleep apnea, uses a nebulizer and Spiriva for her breathing
22 impairments, and carries nitroglycerine for possible heart problems. (AR 37-41.)
23 Although the ALJ characterized this as “routine follow-up and medication
24 management” (AR 19), he did not state what other, more aggressive treatments or
25 procedures were available for Plaintiff’s asthma, COPD, heart and breathing
26 problems. See *Kager v. Astrue*, 256 F. App’x 919, 923 (9th Cir. 2007) (rejecting
27 ALJ’s characterization of treatment as conservative where, *inter alia*, claimant took
28 prescription medications). As a result, the ALJ’s discussion of daily activities is

1 too general and vague to constitute a legally sufficient basis for discounting
2 Plaintiff's subjective symptom testimony. *See Parra v. Astrue*, 481, F.3d 742, 750
3 (9th Cir. 2007). The ALJ also did not cite to medical opinion evidence in support
4 of his conclusion that Plaintiff's treatment is not commensurate with her subjective
5 symptom complaints. *See generally Day v. Weinberger*, 522 F.2d 1154, 1156 (9th
6 Cir. 1975) (ALJ is not qualified as a medical expert). Moreover, the ALJ's
7 reference to the effectiveness of the treatment received by Plaintiff (AR 19-20) is
8 not supported in the decision by specific evidence linking Plaintiff's treatment
9 regimen to effective management of her symptoms on an ongoing basis. As
10 pointed out in Plaintiff's opening brief, there is substantial contrary evidence in the
11 record of multiple visits to emergency rooms and hospitals for Plaintiff's breathing
12 impairments and cardiac problems. (ECF 18 at 7.) Thus, the type of treatment
13 received by Plaintiff — as discussed in the ALJ's decision — is not a clear and
14 convincing reason for discounting the credibility of her claimed symptoms.

15 • **Interview with field office representative**

16 The ALJ stated that Plaintiff "had no difficulty during her interview with a
17 field office representative" (AR 19, *citing* AR 190-92) and that he found the
18 representative's statement to be credible (AR 20). These terse findings by the ALJ
19 are not sufficient to constitute clear and convincing evidence of Plaintiff's lack of
20 credibility. Although the Commissioner's brief points to specific observations
21 made in the interview report (ECF No. 27 at 5), the ALJ did not do so, and the
22 Court may not add these reasons into the decision. *See Connett v. Barnhart*, 340
23 F.3d 871, 874 (9th Cir. 2003). Moreover, Plaintiff testified that she has good days
24 and bad days and that she is able to do certain tasks for a short period of time before
25 her breathing and heart symptoms require her to take a break. By itself, the
26 observation that Plaintiff "had no difficulty" in completing a short interview is not
27 inconsistent with Plaintiff's own description of her impairments, and the ALJ has
28 offered no explanation why this justifies an adverse credibility determination.

1 888 F.2d 599, 603 (9th Cir. 1989); *Lewin v. Schweiker*, 654 F.2d 631, 635 (9th Cir.
2 1981). Remand is warranted where additional administrative proceedings could
3 remedy defects in the decision. *See, e.g., Kail v. Heckler*, 722 F.2d 1496, 1497 (9th
4 Cir. 1984); *Lewin*, 654 F.2d at 635. Remand for the payment of benefits is
5 appropriate where no useful purpose would be served by further administrative
6 proceedings, *Kornock v. Harris*, 648 F.2d 525, 527 (9th Cir. 1980); where the
7 record has been fully developed, *Hoffman v. Heckler*, 785 F.2d 1423, 1425 (9th Cir.
8 1986); or where remand would unnecessarily delay the receipt of benefits, *Bilby v.*
9 *Schweiker*, 762 F.2d 716, 719 (9th Cir. 1985). Here, particularly where Plaintiff
10 challenges only the ALJ's adverse credibility finding, she has failed to show that
11 this case presents the rare circumstances that would warrant an immediate award of
12 benefits. Further administrative proceedings would serve a useful purpose. *See*
13 *Brown-Hunter*, 806 F.3d at 495.¹

14
15 IT THEREFORE IS ORDERED that Judgment be entered reversing the
16 decision of the Commissioner of Social Security and remanding this matter for
17 further administrative proceedings consistent with this Order.

18
19 DATED: August 30, 2016



21 ALEXANDER F. MacKINNON
22 UNITED STATES MAGISTRATE JUDGE
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¹ It is not the Court's intent to limit the scope of the remand.